

CSW proposes to make an initial purchase of 100 shares of EnerShop common stock, par value \$0.10 per share, for an aggregate cash purchase price of \$1,000. CSW also proposes to make loans to EnerShop from time to time through December 31, 1999, with maturities no later than December 31, 2000. Such loans will bear an interest rate that will not exceed the prime rate in effect on the date of the loan at a bank designated by CSW, and may be either evidenced by notes or made pursuant to open account advances. CSW further proposes to guarantee or to act as surety on bonds, indebtedness and performance and other obligations of EnerShop. Such guarantees and arrangements will be made from time to time through December 31, 2000, and will expire or terminate no later than December 31, 2002. The total amount of all common stock purchases, loans and guarantees for which authorization is sought (together with all other purchases by CSW of EnerShop common stock and capital contributions and loans by CSW to EnerShop that are exempt from the requirement of Commission approval) will not exceed \$100 million at any time outstanding. CSW intends to fund loans to EnerShop through its external short-term borrowing program (Holding Co. Act Release No. 26254, March 21, 1995).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

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[Rel. No. IC-21180; 812-9606]

Smith Hayes Trust, Inc.-Capital Builder Fund, et al.; Notice of Application

June 30, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Hayes Trust, Inc.-Capital Builder Fund (the "Company"), Conley Partners Limited Partnership (the "Partnership"), Conley Investment Counsel, Inc. ("CIC"), and John H. Conley ("Conley").

RELEVANT ACT SECTIONS: Orders requested under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Partnership, a private investment

company, to merge into a series of the Company, an affiliated registered investment company.

FILING DATE: The application was filed on May 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 1995 by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 500 Centre Terrace, 1225 "L" Street, Lincoln, Nebraska 68508.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a registered open-end investment company organized as a Minnesota corporation. The Company currently is comprised of nine portfolios, including the Capital Builder Fund (the "CB Fund"). The CB Fund became effective on April 4, 1995, and no offering of shares has commenced. Conley Smith, Inc. (the "Adviser"), a subsidiary of Consolidated Investment Corporation, will act as investment adviser to the CB Fund. Conley is the president of the Adviser and owns approximately 5% of the voting securities of Consolidated Investment Corporation. The principal underwriter for the shares of the CB Fund will be Smith Hayes Financial Services Corporation (the "Distributor").

2. The Partnership was formed in 1989 as a limited partnership under Nebraska state law. The Partnership has not been registered under the Act in reliance upon section 3(c)(1) of the Act, and the Partnership interests have not been registered under the Securities Act of 1933 in reliance upon section 4(2) of

the Act. CIC is the sole general partner of the Partnership and has exclusive control over the management of its business. Conley is the sole shareholder of CIC and the portfolio manager for the Partnership. No person who is an officer or director of the Distributor or the Adviser (except Conley) and no person who is an officer or director of the CB Fund is a limited partner of the Partnership.

3. Applicants propose that, prior to the offering of CB Fund shares to the public, the CB Fund would exchange shares for portfolio securities of the Partnership. After the exchange (the "Exchange"), the Partnership would dissolve and distribute the shares of the CB Fund *pro rata*, based on the net asset value of the Partnership, to the partners of the Partnership, along with cash received, if any, from the sale of the portfolio securities of the Partnership not acquired by the CB Fund. Following the Exchange, partners of the Partnership will constitute all of the shareholders of the CB Fund. The CB Fund has been designed as a successor investment vehicle to the Partnership, with investment objectives and policies substantially the same as those of the Partnership.

4. The proposed Exchange will be effected pursuant to an agreement and plan of exchange (the "Plan") to be approved by the limited partners of the Partnership. Solicitation of the limited partners for approval of the Plan will be made by means of a Prospectus/Information Statement and will be accompanied by a current CB Fund prospectus. Under the Plan, the portfolio securities of the Partnership will be acquired at their independent "current market price," as defined in rule 17a-7 under the Act. The CB Fund will not acquire securities that, in the opinion of the Adviser, would result in a violation of the CB Fund's investment objectives, policies, or restrictions.

5. The Company's board of directors has considered the desirability of the Exchange from the point of view of the Company and the Partnership, and a majority of the board, including a majority of the non-interested members, has concluded that (a) the Exchange is in the best interest of the CB Fund, the Partnership, and the limited partners of the Partnership; (b) the Exchange will not dilute the interests of the partners of the Partnership when their interests are converted into shares of the CB Fund; and (c) the terms of the Exchange as reflected in the Plan have been designed to meet the criteria set forth in section 17(b) of the Act that the Exchange be reasonable and fair, not involve overreaching, and be consistent with the

policies of the CB Fund and the Partnership. The board considered each aspect of the Exchange, including (i) the method of valuing the portfolio securities to be acquired from the Partnership; (ii) the net asset value of the shares to be delivered to the Partnership; (iii) the procedure for selecting among the portfolio securities of the Partnership; (iv) the possibility of incurring excessive brokerage costs as a result of redemptions of CB Fund shares by former partners of the Partnership; (v) the allocation of the costs of the Exchange; (vi) the possibility of adverse tax consequences to future shareholders of the CB Fund; and (vii) the benefits from the Exchange accruing to CIC and Conley.

6. The Exchange will not be effected unless: (a) The registration statement of the CB Fund has been declared effective; (b) the Plan has been approved by a majority in interest of the limited partners of the Partnership; (c) the requested order has been granted; and (d) the limited partners have received an opinion of counsel that (i) the distribution of CB Fund shares, which will be in liquidation of the Partnership interests in the Partnership, will not cause taxable gain or loss to be recognized by the limited partners; (ii) the basis of the limited partners in CB Fund shares will be equal to the adjusted basis of the limited partners' interests in the Partnership; and (iii) the limited partners' holding periods with respect to CB Fund shares will include the Partnership's holding period with respect to such shares.

7. The Adviser will assume the costs of the Exchange, except for registration and filing fees of the CB Fund shares, and will assume the legal fees and expenses relating to the requested order and the obtaining of the opinion of counsel on certain tax matters. No brokerage commission, fee, or other remuneration will be paid in connection with the Exchange.

8. After the Exchange is accomplished, the Adviser intends for the foreseeable future to manage the assets of the CB Fund in substantially the same manner as the Partnership's assets were managed, except as may be necessary or desirable (a) to qualify the CB Fund as a regulated investment company under the Internal Revenue Code of 1986, as amended; (b) to comply with the investment restrictions adopted by the CB Fund in accordance with the requirements of the Act or securities laws of states where CB Fund shares will be offered; or (c) in light of changed market conditions.

Applicants' Legal Conclusions

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling to or purchasing from such investment company any security. The Partnership may be an affiliated person of the Company because the Partnership and the Company may be deemed under the control of CIC (and, indirectly, Conley) because of its role as general partner of the Partnership, Conley's ownership of stock in the parent of the Adviser, and Conley's position as an officer of the Adviser. Thus, the proposed Exchange may be prohibited by section 17(a). Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act.

2. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). The investment objectives of the CB Fund and the Partnership are substantially similar. In addition, the CB Fund will acquire the Partnership portfolio securities at their independent "current market price." Applicants believe that the Exchange can be viewed as a change in the form in which the assets are held, rather than as a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its

approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: July 6, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M-32, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on July 6, 1995:

DOT No.: 4074.

OMB No.: 2125-New.

Administration: Federal Highway Administration (FHWA).

Title: National Highway User Customer Survey.

Need for Information: Executive Order No. 12862 requires agencies to set customer service standards.

Proposed Use of Information: This information will be used by FHWA to provide quantitative measurements that can be used in the development of National performance in an overall effort of the Federal-aid highway program.

Frequency: On occasion.

Burden Estimate: 750.